

GRANT AGREEMENT

GRANT AGREEMENT made and entered into this 1st day of Oct, 2015, by and between the Office of the District Attorney, New York County (hereinafter referred to as "DANY"), having its principal place of business at One Hogan Place, New York, N.Y. 10013, and Tempe Police Department (hereinafter referred to as "Grantee"), having its principal place of business at 120 E. 5th St DANY and Grantee are the "Parties." Tempe, AZ 85281

WHEREAS, DANY established and funded a Criminal Justice Investment Initiative ("CJII") to invest in projects that will enhance public safety, develop broad crime prevention efforts and promote a fair and efficient criminal justice system; and,

WHEREAS, under the CJII, DANY issued a Request for Proposals ("RFP") for a Sexual Assault Kit ("SAK") Backlog Elimination Program (the "Program") for the selection of governmental entities to receive grants of money from DANY to promote strategies to permanently eliminate a national SAK backlog; and,

WHEREAS, Grantee submitted an application to participate in the Program and was selected by DANY as a Lead Applicant to receive a grant of CJII monetary funding; and,

WHEREAS, DANY designated the Research Foundation of The City University of New York (hereinafter referred to as "RFCUNY"), a not-for-profit educational corporation chartered by the New York State Regents, to serve as Fiscal Administrator of the Program; and,

WHEREAS, services will begin on 1/1/16, and,

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Grant Agreement the following terms are defined as follows:

A. "Allowable Expense" or "Allowable Expenses" means: (1) the cost of testing Untested or Backlogged SAKs including transporting SAKs to a forensic lab, postage to ship SAKs to a forensic lab, initial DNA testing in a public or private forensic lab (including consumables and supplies associated with kit testing, technical reviews, and CODIS uploads by the lab), (2) if Grantee is or uses a public lab, payment for overtime or contract personnel over and above the public lab's current capacity (provided, however, that grant funds cannot be used to supplant existing personnel resources), and (3) reasonable and necessary costs associated with travel, lodging and meals for a small delegation (three persons, maximum) to attend a 2-day workshop hosted by the U.S. Department of Justice's Bureau of Justice Assistance in Washington, DC in Federal Fiscal Year 2016. The term "Allowable Expenses" also includes any expense listed in Attachment B (Budget Worksheet and Narrative). "Allowable Expenses" can be incurred only during the two-year Term of this Grant Agreement. The term "Allowable Expenses" does not encompass, and grant funds cannot be used to pay for, inventorying SAKs, investigating and prosecuting cases, creating data and information-sharing systems, purchasing laboratory equipment or other capacity-building expenses,

management and administration of the Program, report preparation, victim services, onsite training, any expense incurred before or after the two-year Term of this Grant Agreement, or other similar costs.

B. “Combined DNA Index System” or “CODIS” means the Federal Bureau of Investigation’s national DNA database for uploading DNA profiles contributed by participating federal, state and local forensic laboratories.

C. “Community-Based Victim Advocate” means a person employed by an independent non-profit agency that provides ongoing, comprehensive support and counseling to victims to address trauma and other needs resulting from a sexual assault.

D. “Effective Date” is October 1, 2015, the date program services commence.

E. “Forklift Approach” means the testing of all Untested SAKs irrespective of the type of kit. Under a “Forklift Approach” SAKs should not be excluded from the sample of kits to be tested for reasons including: expired statute of limitations, perceived weaknesses in the case, the nature of the victim/defendant relationship, victim cooperation at the time the crime was reported, previous adjudication of the case, or prior forensic testing.

F. “Lead Applicant” means a Grantee that is responsible for reporting to DANY on an implementation of a Multi-Disciplinary Strategy and for performing other duties as set forth in this Grant Agreement. A Lead Applicant also may be responsible for coordinating activities of a Multi-Jurisdictional Entity.

G. “Multi-Disciplinary Strategy” means an approach to remedying the Untested SAK Backlog problem (described in the RFP) that incorporates all critical stakeholders, including law enforcement, prosecutors, System- and Community-Based Victim Advocates, forensic medical personnel and laboratories (each such entity, other than the Lead Applicant, is referred to herein as a “member participant”), and coordination of local SAK testing efforts. In some jurisdictions, a working group or task force may be established.

H. “Multi-Jurisdictional Entity” means a Lead Applicant, such as a state lab or a state bureau of investigation, acting on behalf of multiple smaller jurisdictions (each of which is referred to herein as a “member jurisdiction”), such as counties or cities.

I. “Random Sample” means, for a jurisdiction other than one that will test its entire backlog of SAKs, a process of selecting a subset of SAKs in which each kit in the subset has an equal probability of being selected for testing. For example, if a Grantee receives funding to test one-fourth of its total backlog, the Random Sample should include every fourth SAK – and Grantee is not permitted to intentionally select a specific kit for testing. However, notwithstanding the foregoing, specific kits may be selected for testing if a statute of limitations will expire within two years.

J. “System-Based Victim Advocate” means a person employed by a law enforcement agency, such as a police department or prosecutor’s office, who links victims to services and acts as a liaison to victims throughout the process of investigating and prosecuting a crime.

K. "Untested SAK" or "Untested or Backlogged SAK" means a Sexual Assault Kit that has not been analyzed by a forensic lab within 365 days of being booked into law enforcement evidence. SAKs from cases in which the identity of the offender is not an issue, the statute of limitations has expired, or the offender was convicted without DNA evidence still fall under this definition and are not excluded. SAKs that have been tested, but have not been DNA tested, also fall under this definition and are not excluded. These terms do not include SAKs in cases where a victim chooses not to report a crime. Such non-reported, unreported, anonymous, or "Jane Doe" SAKs should not be tested under the Program unless a victim has decided to make a police report at a later time. In addition, the term does not include cases where evidence exists that no crime was committed (*e.g.*, the victim recants or video footage exists demonstrating there was no crime).

L. "Fiscal Administrator" shall mean an entity retained by DANY, at the direction of DANY, to issue payments to Grantee, and to take such other actions as set forth in this Grant Agreement on behalf of DANY.

ARTICLE 2. TERM OF GRANT AGREEMENT

Unless extended in writing by the Parties, the Term of this Grant Agreement is two (2) years, commencing on the Effective Date, as defined above. The Parties agree that Grantees may request an extension in the last quarter of the Program no later than 90 days before the termination date of this Agreement.

ARTICLE 3. TOTAL GRANT AMOUNT

Unless increased by DANY in its sole discretion, the total amount of grant funds payable to Grantee under this Grant Agreement shall not exceed \$ 363,699 (the "Total Grant Amount").

ARTICLE 4. SCOPE OF WORK

4.1 Grantee and member participants or jurisdictions must use a Forklift Approach under a Multi-Disciplinary Strategy to render and perform all services for Untested SAKs required in the RFP and all services for Untested SAKs offered in Grantee's application to participate in the Program. The RFP and Grantee's application to participate in the Program are Attachments A and F, respectively. In accordance with its role as Lead Applicant of a Multi-Disciplinary Strategy or Multi-Jurisdictional Entity, Grantee holds responsibility for: (1) coordinating the participation of all the member participants of such Multi-Disciplinary Strategy and member jurisdictions of such Multi-Jurisdictional Entity, (2) reporting to DANY on the Program activities of itself and all member participants or jurisdictions on a quarterly basis and submitting a final report at the conclusion of the Program, (3) liaising with the U.S. Department of Justice, Bureau of Justice Assistance ("BJA") training and technical assistance provider (if applicable) on behalf of itself and all member participants or jurisdictions to avail itself and them of any BJA training and technical assistance that BJA may provide to grantees of the Program, (4) taking all measures reasonably within Grantee's power or control to obtain compliance with the written commitments of such member participants or jurisdictions (including with respect to adherence to "best practices") that are set forth in Grantee's application to participate in the Program, and (5) submitting a consolidated invoice each quarter for Allowable Expenses incurred by itself and all member participants or jurisdictions to result in a single payment to Grantee only. Upon DANY's written approval, a member participant of a Multi-Disciplinary

Strategy other than Grantee may be permitted to assume primary responsibility for performing one or more of the above listed duties, other than item (5).

4.2 Grantee shall take all measures reasonably within its power or control to cause the following "best practice" procedures to be implemented: (1) all eligible DNA profiles resulting from SAK testing should be entered into CODIS within a reasonable timeframe, (2) law enforcement agencies and prosecutors should be notified of all CODIS hits that result from such testing so that investigation and, where appropriate, prosecution can occur, and (3) a coordinated strategy to notify and engage victims following CODIS hits should be implemented.

4.3 If Grantee is receiving funding sufficient to test only a subset of its Untested SAKs, it must use a Random Sample, as defined in this Grant Agreement, to select SAKs for testing under the Program.

4.4 Grantee shall submit quarterly performance measurement reports to DANY covering a period of four (4) years from the date services begin. Such reports shall be submitted to DANY within thirty (30) days after the end of each calendar quarter. Each report must describe all of Grantee's Program activities and those of its member jurisdictions or member participants for that calendar quarter. At the time the Parties are entering into this Grant Agreement, the Parties expect that quarterly reports applicable in whole or in part to activities during the two-year Term of this Grant Agreement will consist of two parts as shown in Attachments C1 and C2: (a) a survey in Google Forms, and (b) a case spreadsheet in MS-Excel. In addition, each report after the expiration or termination of this Grant Agreement will consist of: (a) a case spreadsheet in MS-Excel as shown in Attachment C, and (b) answers to the questions DANY poses to Grantee about sustainability. Submission of the part of a report in Google Forms will be performed online and the MS-Excel case spreadsheet will be transmitted to DANY by email. Grantee shall comply with such instructions as DANY may issue concerning the form, content and manner of submission of these reports, which may reasonably vary during the Term of this Grant Agreement. Furthermore, Grantee must submit a final report to DANY at the conclusion of the Program in accordance with such instructions as DANY may issue concerning the form, content and manner of submission of such final report.

ARTICLE 5. BUDGET AND ALLOWABLE EXPENSES

DANY will cause Grantee to be paid for Allowable Expenses that Grantee incurs under the Program during the Term of this Grant Agreement in accordance with the Grantee's Budget Worksheet and Narrative that is attached as Attachment B. The unit prices of individual expenditures set forth in Attachment B shall serve as guidelines for approval and payment of invoices submitted by Grantee under this Grant Agreement. It is understood and agreed that such amounts are estimates and it may be appropriate for actual expenses to vary from such estimates; provided, however, that prior approval of DANY is required in the event any such variation may result in a material change in DANY's programmatic goals. If DANY or its Fiscal Administrator, RFCUNY, requests explanation of reasonableness of variance of actual expense(s) from estimate, Grantee shall provide such requested information.

ARTICLE 6. INVOICING AND PAYMENT PROCEDURE

A. Each invoice shall be a written request for payment that is submitted by Grantee to DANY and RFCUNY, DANY's designated Fiscal Administrator, that describes and lists the quantity and price of Allowable Expenses incurred during the previous quarter and is supported by such documentation as

DANY or RFCUNY may reasonably require. Each invoice shall include a fiscal report applicable to a period of time (*i.e.*, calendar quarter) covered by the invoice. Grantee shall submit invoices and fiscal reports within 30 days after each calendar quarter ending during (or less than three months after) the two-year Term of this Grant Agreement. At the time the Parties are entering into this Grant Agreement, the Parties expect that quarterly fiscal reports will be in the form shown in Attachment D.

B. Procedures for submission of invoices to RFCUNY are set forth in Attachment E. Grantee shall comply with such instructions as DANY may issue concerning the submission of invoices and the form and content of the fiscal report (Attachment D), which may reasonably vary during the Term of this Grant Agreement.

C. DANY shall cause RFCUNY, its Fiscal Administrator, to make payment due under Article 5 of this Grant Agreement, up to the "Total Grant Amount" indicated in Article 3 of this Grant Agreement, within 30 days of receipt of a completed and accurate invoice that is submitted to DANY and RFCUNY in accordance with the above requirements. There is no provision for payment of any interest or other charges in the event of late payment.

D. Notwithstanding any provision in this Grant Agreement to the contrary, DANY and its Fiscal Administrator, RFCUNY, will withhold payment for any expense that DANY or RFCUNY determines does not meet the definition of the term "Allowable Expense" of this Grant Agreement.

ARTICLE 7. ADDITIONAL TERMS AND CONDITIONS

7.1 This Grant Agreement shall be deemed to be executed in the City and State of New York and shall be governed by and construed in accordance with the laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the laws of the United States, where applicable.

7.2 The Parties agree that any and all claims asserted by or against DANY arising under or related to this Grant Agreement shall solely be heard and determined in state or federal court located in County of New York. The Parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue and forum.

7.3 No claim shall be made by either Party against any officer, agent or employee of the other Party in their personal capacity for, or on account of, anything done or omitted in connection with this Grant Agreement.

7.4 Grantee shall perform all services under this Grant Agreement in accordance with all applicable laws as are in effect at the time such services are performed, including without limitation laws applicable to fair employment practices and personal privacy.

7.5 Grantee shall not assign, transfer, convey or otherwise dispose of this Grant Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Grant Agreement, without the prior written consent of the District Attorney of New York County. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

7.6 All persons who are employed by Grantee and all consultants and independent contractors who are retained by Grantee to perform services under this Grant Agreement, and all member jurisdictions of a Multi-Jurisdictional Entity or member participants of a Multi-Disciplinary Strategy (including their employees, consultants and contractors), are neither employees of DANY nor under contract with DANY. Neither DANY nor its Fiscal Administrator, RFCUNY, is responsible for their work, direction, compensation or personal conduct while engaged in performing work under the Program. Nothing in this Grant Agreement shall impose any liability or duty on DANY or RFCUNY for any acts, omissions, liabilities or obligations of Grantee or any of its officers, employees or agents. Except as specifically stated in this Grant Agreement, nothing in this Grant Agreement shall impose any liability or duty on DANY or RFCUNY to any person or entity.

7.7 To the extent permitted by Grantee's state law, Grantee shall defend, indemnify and hold DANY, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which DANY, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of Grantee or its contractors in carrying out the terms of this Grant Agreement to the extent resulting from failure to comply with the provisions of this Grant Agreement or of law. Insofar as the facts or law relating to any claim would preclude DANY from being completely indemnified by Grantee, DANY shall be partially indemnified by Grantee to the fullest extent permitted by the Grantee's state law. Notwithstanding any other provision of this Grant Agreement; this Agreement is not intended to create or vest any rights in any third-party not a signatory hereto.

7.8 Grantee shall not commence performing services under this Grant Agreement unless and until all insurance required by DANY is in effect, and Grantee shall have continuous insurance coverage in the manner, form and limits required by DANY throughout the Term of this Grant Agreement. DANY's insurance requirements are available from DANY's Agency Chief Contracting Officer. For each insurance policy required by DANY, Grantee shall submit a certificate of insurance in a form acceptable to DANY at the time it returns the signed Grant Agreement to DANY. In lieu of insurance, as appropriate, Grantee may instead submit a certificate signed by an officer of Grantee substantially in the following form: "[Name of Grantee] does not maintain insurance. [Name of Grantee], with such authority to sign such a certificate, is a government entity authorized to expend funds for any loss, claim, action or judgment. This certifies that [Name of Grantee] will defend, settle and, without limitation, satisfy any judgment against it in connection with all claims and/or litigation filed against it by all entities and individuals for injuries and/or property damage. This is applicable to claims arising from [Name of Grantee]'s activities and/or contracts to which [Name of Grantee] is a party."

7.9 Grantee agrees that all data, reports and other written or graphic work produced in the performance of this Grant Agreement are subject to the rights of DANY as set forth in this paragraph. DANY shall have the right to reproduce, publish and use all such work, or any part thereof, and authorize others to do so; provided, however, that jurisdiction-specific data collected from Grantees will be used only for evaluation purposes and DANY (or any party authorized by DANY) will only report aggregate, anonymized outcomes. If DANY (or any party authorized by DANY) wishes to report jurisdiction-specific information prior approval will be sought from the Grantee. If any such work is copyrightable by Grantee, then notwithstanding such copyright DANY reserves a royalty-free, non-exclusive and irrevocable license to

reproduce, publish and use such work or any part thereof, and to authorize others to do so, subject to the same proviso as above in this paragraph. No victim-specific or case-specific information provided to DANY under this Grant Agreement will be disclosed to any other party. Any document prepared, owned, or retained by the Grantee is subject to the laws of Grantee's state.

7.10 Grantee agrees to maintain satisfactory financial accounts, documents and records of its participation in the Program and to make them available to DANY or its designee for auditing at reasonable times. If Grantee, or a member jurisdiction of a Multi-Jurisdictional Entity or a member participant of a Multi-Disciplinary Strategy, also is receiving funding from the U.S. Department of Justice's Bureau of Justice Assistance for its SAK testing initiative, Grantee must implement financial record-keeping procedures adequately designed to prevent charging both DANY and BJA for the same work. Grantee also agrees to retain such financial accounts, documents and records during the Term of this Grant Agreement and for four years following the expiration or termination of this Grant Agreement. Grantee's participation in the Program is subject to audit by DANY or its designee during the Term of this Grant Agreement and for four years following expiration or termination of this Grant Agreement.

7.11 The terms of this Grant Agreement regarding indemnification, payment, reporting, use and disclosure of information and any others that by their sense and context are intended to survive the expiration or termination of this Grant Agreement shall survive and continue in full force and effect notwithstanding the Grantee's record retention laws or other comparable state-mandated laws regarding record retention.

7.12 Failure by Grantee to comply with the requirements of this Grant Agreement, or failure (as applicable) of a member jurisdiction or member participant to comply with the terms of a written commitment submitted by a Lead Applicant as part of its application to participate in the Program, may be cause for suspension or, in the event of material breach, termination of all obligations of DANY hereunder.

7.13 Failure by Grantee over a period of two (2) consecutive quarters to achieve substantial compliance with a timetable for accomplishments indicated in Grantee's application to participate in the Program (Attachment F) may result in DANY requesting submission of a Corrective Action Plan from Grantee and possible reduction of the Total Grant Amount set forth in Article 3 of this Grant Agreement.

7.14 This Agreement may be terminated without cause by DANY or Grantee upon delivery of written notice of termination sent not less than 90 days prior to the effective date of termination. On the effective date of termination, the Grantee shall not continue to perform any testing of Untested SAKs or Untested or Backlogged SAKs; Grantee will continue to review DNA lab reports, upload any DNA profiles into CODIS, and submit reports to DANY with respect to SAKs tested prior to the effective date of termination. All Allowed Expenses shall be paid to the Grantee upon submission of invoices as set out in Article 6, including Allowed Expenses for the SAKs tested prior to the effective date of termination and related review, uploading, and reporting of such SAKs."

7.15 Each person executing this Agreement represents and warrants that they have the express authority, right, and power to execute this Agreement and to bind the party on whose behalf they sign.

7.16 Notwithstanding any other term of this Grant Agreement, Grantee shall not be required to provide information that is prohibited from disclosure by law.

7.17 This written Grant Agreement, including the Attachments listed below, contains all the terms and conditions agreed upon by the Parties, and no other agreement, oral or otherwise, regarding the subject matter of this Grant Agreement shall be deemed to exist or to bind either of the Parties, or to vary any of the terms contained in this Grant Agreement, other than a written change, amendment or modification duly executed by both Parties. Any conflict or inconsistency between the parts of this Grant Agreement shall be resolved in the following order of precedence:

1. This document titled Grant Agreement
2. Attachment A: The RFP issued by DANY
3. Attachment B: Budget Detail Worksheet
4. Attachments C1 and C2: Quarterly Performance Measurement Reporting Template
5. Attachment D: Quarterly Fiscal Reporting Template
6. Attachment E: Fiscal and Performance Metrics Reporting Instructions
7. Attachment F: Grantee's application to participate in the Program

(There is no further text on this page)

IN WITNESS WHEREOF, the parties undersigned executed this contractual Agreement effective as of the day and year first written above.

**The New York County District
Attorney's Office**

BY: Karen Friedman-Agnifilo

Title: Chief Assistant District Attorney

Date:

Grantee: Tempe Police Department

BY: John Rush

Name: John Rush

Title: Acting Chief of Police

Date:

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

On this ____ day of _____ 20 ____, before me personally came _____ of the City of New York, New York County District Attorney's Office, to me known, and known to me to be the person described in, and who executed the foregoing agreement, and acknowledge to me that he executed the foregoing as such for the purposes therein mentioned.

NOTARY PUBLIC

STATE OF _____)
COUNTY OF _____) ss:

On this ____ day of _____ 20 ____, before me personally came _____ of the _____, to me known, and known to me to be the person described in, and who executed the foregoing agreement, and acknowledge to me that he executed the foregoing as such for the purposes therein mentioned.

NOTARY PUBLIC